IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1406 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

Versus

Appearance:
1. First Appeal No. 1406 of 1979
MR VC DESAI for appellant
Respondents served

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/11/2002

ORAL JUDGEMENT

1. This appeal which is filed under Section 96 of the Code of Civil Procedure ('the Code' for short) is directed against the judgment and decree dated 30.7.1979 rendered in Civil Suit No.1475 of 1976 by the learned

Judge (Court No.18) City Civil Court, Ahmedabad, by which the suit filed by the appellant seeking specific performance of the agreement dated 20.5.1974 against deceased respondent came to be negatived and thereby dismissed the suit with cost.

2. The appellant was the plaintiff whereas respondents are the heirs and legal representatives of the deceased defendant who has died during the pendency of the appeal. The parties are, therefore, hereinafter referred to in this judgment as 'plaintiff' and 'deceased defendant' for the sake of convenience and brevity.

3. The facts are these:

3.1. The property bearing City Survey Nos.999 and 1002 bearing Municipal Census No.1033/2 situated at Gomtipur ward of Ahmedabad City ('the suit property' for short) was originally belonged to Smt. Narmadaben Haribhai Patel who had purchased the same by registered sale deed dated 18.6.1970. She sold away the suit property to the deceased defendant by registered sale deed dated 20.5.1974. The plaintiff was in possession of the suit property as the tenant. It was alleged by the plaintiff that the deceased defendant executed an agreement dated 20.5.1974 in favour of the plaintiff for selling the suit property to the plaintiff in consideration of RS.9,000/The plaintiff paid an amount of Rs.500/- to the deceased defendant as an earnest money on the same day and the remaining amount of the purchase price was to be paid by the plaintiff to the deceased defendant within a period of two years from the date of the agreement.

3.2. It was also the case of the plaintiff that a gambling case was made out against the deceased defendant about three months prior to the date of the suit and hence he had called for an amount of Rs.1750/- from the plaintiff by sending a note through one Madhubhai Narayanbhai. The plaintiff paid the said amount to Madhubhai Narayanbhai on the strength of the note of the deceased defendant. It was the case of the plaintiff that the deceased defendant had agreed to give credit of the said amount of Rs.1750/- towards the remaining amount of the purchase price payable by the plaintiff. As per the case of the plaintiff he repeatedly requested the deceased defendant to execute the sale deed in respect of the suit property in his favour but he did not pay any heed to it. Therefore the deceased defendant was served with a registered notice dated 29.3.1976 but he refused to accept the same. Thereafter a copy of the notice was sent to the deceased defendant under postal certificate.

However, the deceased defendant did not give any reply to the said notice. Since the deceased defendant had not acted as per the demand made by the plaintiff in the said notice, the plaintiff was obliged to file the suit for specific performance of the agreement dated 20.5.1974 against the deceased defendant. In the suit also the plaintiff pleaded that he was ready and willing to perform his part of the agreement by paying remaining purchase price to the deceased defendant.

3.3. The deceased defendant had resisted the suit by filing written statement at Ex.11. Though the deceased defendant had not denied the suit agreement and had also not denied the receipt of the amount of Rs.500/- as an earnest money but he denied the plaintiff's case that the deceased defendant had called for an amount of RS.1750/through one Madhubhai Narayanbhai by sending a note to him. It was also denied by the deceased defendant that he had agreed that he would give credit of the amount towards the purchase price payable by the plaintiff under the agreement. It was also denied by him that the plaintiff had requested him to execute the sale deed under the terms of the suit agreement. It was asserted by him that the plaintiff was not prepared and was not in a position to perform his part of the agreement as he was not a position to pay the remaining amount of the purchase price. It was also contended that the plaintiff was in arrears of rent and hence he had filed a suit against him for recovery of rent and hence the plaintiff filed the suit as a counter-blast. It was also denied by him to have refused to accept the suit notice date 29.3.1976 and also denied to have received any copy of the suit notice. Lastly it was contended that the suit was barred by Law of Limitation and therefore it was prayed to dismiss the suit.

3.4. The trial court framed necessary issues at Ex.23 and on appreciation and evaluation of the evidence came to the conclusion that the plaintiff was not ready and willing to perform his part of the agreement. The plaintiff has failed to prove that he has paid to defendant Rs.1750/- towards the suit agreement as per the note sent by the deceased defendant through Madhubhai Narayanbhai. The deceased defendant had not committed any breach of the agreement. On the aforesaid findings, the trial court held that the plaintiff has failed to prove that he was ready and willing to perform his part of the suit agreement which would disentitle him to claim the specific performance of the agreement. Resultantly the trial court dismissed the suit which has given rise to the present First Appeal at the instance of the

plaintiff.

4. Mr. V.C. Desai, learned advocate for the appellant contended that the plaintiff has successfully established the agreement dated 20.5.1974 which was executed by the deceased defendant in favour of the plaintiff. It was also established by the plaintiff that he had paid Rs.500 on the same day to the deceased defendant. So far as the payment of RS.1750/- was concerned, the plaintiff has in his oral evidence stated that he has paid he said amount to Madhubhai Narayanbhai on the basis of the note sent by deceased defendant from jail by examining said Madhubhai Narayanbhai before the trial court at Ex.32. However, the evidence adduced by the plaintiff with respect to payment of RS.1750/- has been erroneously disbelieved by the learned trial judge which has resulted into miscarriage of justice. It is also asserted by Mr. Desai, learned advocate for the plaintiff that the plaintiff has also deposited Rs.6750/in the lower court on 7.5.1976 on the next day of the filing of the suit and therefore the plaintiff was always ready and willing to perform his part of the agreement. However, the learned trial Judge has without considering this aspect recorded the decree by which the prayer made by the plaintiff came to be turned down. The said finding of fact is recorded contrary to the evidence on record and, therefore, the plaintiff has successfully established readiness and willingness on his part to accept the said agreement and therefore this Court while exercising powers under section 96 of the Code may allow this appeal by appreciating the evidence on record. According to him, this appeal deserves to be allowed by passing decree as prayed for by the plaintiff.

5. Heirs and legal representatives of the deceased defendant who has died during the pendency of the appeal are brought on record. Though served they have elected to remain absent.

6. I have considered the submissions advanced by Mr. V.C. Desai, learned advocate for the appellant. I have also perused the averments made in the memo of the appeal, grounds set out therein, the impugned judgment and decree and the set of evidence which has been supplied by Mr. Desai during the course of his submissions.

7. At the outset, be it stated that there is no dispute with respect to the agreement dated 20.5.1974 which came to be entered into between the plaintiff and the deceased defendant by which the deceased defendant

agreed to sell the suit property to the plaintiff in consideration of Rs.9,000/- as the plaintiff was already occupying the said property in the capacity of a tenant. There is also no dispute that the plaintiff had paid Rs.500/- to the deceased defendant on the same day as an earnest money. However, there is dispute with respect to payment of Rs.1750/- to the deceased defendant which according to the plaintiff was paid by him to deceased defendant who was in jail, through Madhubhai Narayanbhai on the basis of the note sent by him through jail.

8. So far as the evidence in this regard is concerned, on perusal of the same, there is no manner of doubt that the said evidence is bristled with so many contradictions and neither the plainiff nor his witness was sure as to on which date the said amount was paid by the plaintiff to deceased defendant on the basis of the note which was produced at Ex.26.

9. The plaintiff has failed to prove that the note was written by deceased defendant as he has failed to prove the handwriting on the note as that of deceased defendant. Therefore, in my view, the trial court has rightly refused to believe that part of the evidence and resultantly came to the conclusion that since the plaintiff has failed to prove that he has paid Rs.1750/as averred by him to the deceased defendant he was not ready and willing to perform his part of the agreement.

10. On having perusal of the evidence of the plaintiff, during his cross-examination, he has categorically stated that he was not ready to pay entire amount of the purchase price. Therefore, in my view, the plaintiff was not ready and willing to perform his part of the agreement and if he was ready to perform his part of the agreement, he ought to have shown readiness and willingness to pay RS.1750/- as the said amount was not proved to be paid by him to the deceased defendant.

11. In above view of the matter, I find myself in complete agreement with the reasoning adopted by the trial court and ultimate conclusion reached by it and therefore there is no justifiable ground or valid reason to interfere with the impugned judgment and decree in exercise of powers under Section 96 of the Code and, therefore, according to me, the appeal deserves to be dismissed by confirming the impugned judgment and decree passed by the trial court by which the suit filed by the plaintiff seeking specific performance of the agreement dated 20.5.1974 came to be negatived.

12. It is a settled legal position that even at the final hearing stage when the appellate court agrees with the reasons given and conclusions arrived at by the Trial Court, it is not necessary for the appellate court to reiterate the evidence and elaborately state reasons for reaching the same conclusion. Expression of 'general agreement' with the reasons given and conclusions arrived at by the trial Court would be sufficient. This is so held by the Supreme Court in the case of Girijanandini Devi and others v. Bijendra Narain Choudhary, AIR 1967 SC 1124. In the instant case, as indicated hereinabove, I agree with the reasons given and conclusions arrived at by the trial Court as no other conclusion was possible on the facts and in the circumstances emerging from the record of the case.

13. For the foregoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

14. It is mentioned in the judgment that the plaintiff has deposited Rs.6750/- in the trial court on 7.5.1976, that is, on the next day of the filing of the suit and since the specific performance of the agreement was refused by the trial court which is confirmed by this court, the plaintiff is entitled to get back the said amount which he has deposited on 7.5.1976 in the trial court. Therefore, the plaintiff is at liberty to withdraw the said amount from the trial court. The trial court is directed to return the said amount to the plaintiff upon due verification.

(A.M. Kapadia, J.)

(karan)